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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

v.

YIN GONG CORP., a corporation, and YONG
XING WANG, individually,

Defendants.

No. 21 Civ. 5613 (PKC)

CONSENT DECREE

WHEREAS, on June 28, 2021, Plaintiff the United States of America (the “United States”), acting on behalf of the United States Department of Agriculture (“USDA”), filed a complaint for injunctive relief (the “Complaint”) against Defendants Yin Gong Corp. (“Yin Gong”), a corporation, and Yong Xing Wang, individually (collectively, “Defendants”), alleging that Defendants have violated, and threaten to violate in the future, the Federal Meat Inspection Act (the “Meat Inspection Act”), 21 U.S.C. § 601 *et seq.*;

WHEREAS the United States and Defendants (collectively, the “Parties”) agree, and the Court by entering this Consent Decree finds, that this consent decree is fair, reasonable, and in the public interest; and

NOW, THEREFORE, with the consent of the Parties, it is hereby ORDERED, ADJUDGED, and DECREED as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 21 U.S.C. § 674 and 28 U.S.C. §§ 1331, 1337 and 1345, and personal jurisdiction over all the parties to this action.

2. Venue is proper pursuant to 28 U.S.C. § 1391(b) and (c).

ADMISSIONS

3. Defendants admit, acknowledge, and accept responsibility for the following:

a. Defendant Yin Gong is a retail seller of meat and meat food products, with a retail store and principal place of business currently located at 18 Eldridge Street, New York, New York, 10002. Yin Gong's prior place of business was 13B Eldridge Street, New York, NY 10002.

b. Defendant Yong Xing Wang is the President of Yin Gong.

c. Defendants are and have been engaged in the business of preparing and selling, among other things, meat and meat food products in the State of New York and within the jurisdiction of this Court.

d. Defendants have repeatedly sold non-federally inspected meat and meat food products to retailers for resale, in violation of the Meat Inspection Act. For example, on or about August 6, 2015, March 3, 2016, July 12, 2018, September 22, 2018, November 24, 2019, and November 19, 2020, Defendants prepared, offered for sale, and sold non-federally inspected pork dumplings to other retailers for resale, in violation of 21 U.S.C. § 610(c).

e. Defendants have also repeatedly sold misbranded meat and meat food products, in violation of the Meat Inspection Act and an accompanying implementing regulation, 9 C.F.R. § 317.2. For example, on or about November 24, 2019, and November 19, 2020, Defendants prepared, offered for sale, and sold bags of non-federally inspected pork dumplings to other retailers for resale without any labeling, in violation of 9 C.F.R. § 317.2.

f. Defendants have also repeatedly failed to maintain records that fully and correctly disclosed their business transactions, in violation of 21 U.S.C. § 642 and 9 C.F.R. § 320.1. For example, Defendants did not maintain records with sufficient information concerning Defendants' sale of pork dumplings and pork buns to a retailer for resale on or about November 24, 2019, because Defendants maintained no records concerning the name or address of the buyer of these products, among other information required to be maintained by Defendants under 21 U.S.C. § 642 and 9 C.F.R. § 320.1. Defendants also did not maintain records with sufficient information concerning Defendants' sale of pork dumplings to a retailer for resale on or about November 19, 2020, because Defendants maintained no records concerning the nature of the meat and meat food products that were sold, among other information required to be maintained by Defendants under 21 U.S.C. § 642 and 9 C.F.R. § 320.1.

INJUNCTIVE RELIEF

4. ***Compliance with Meat Inspection Act.*** Defendants and each and all of their directors, officers, agents, servants, representatives, employees, successors, or assigns, and any and all persons in active concert or participation with them, directly or indirectly, who received

actual notice of this Decree by personal service or otherwise, are hereby permanently restrained and enjoined from:

- a. preparing, selling, transporting, offering for sale, or receiving in commerce, any uninspected or misbranded meat or meat food products capable of use as human food required to be inspected and passed by USDA;
- b. not keeping such records as willfully and correctly disclose the purchase, receipt, offer for sale, sale, transport, and/or any other transaction regarding any articles capable of use as human food, involved in their business; and
- c. engaging in any other conduct that would violate the Meat Inspection Act or the regulations promulgated thereunder.

5. ***Recordkeeping.*** Defendants must prepare and maintain business records of all transactions involving meat and meat food products. This includes, but is not limited to, transactions while operating pursuant to any exemption of the requirement to obtain a federal grant of inspection under the Meat Inspection Act (a “Meat Inspection Act Inspection Exemption”), 9 C.F.R. Part 320. Such business records shall include, but are not limited to, documents showing the amounts of meat and meat food product purchased by the defendants and receipts for such purchases. Defendants must maintain each record for a period of not less than three (3) years from the date of origination of such record. These records must be maintained at Defendants’ establishment or facility.

6. ***Compliance with Regulations.*** Defendants agree to comply at all times with all applicable requirements of 9 C.F.R. § 303.1.

7. ***Access; Seizure.*** Defendants must, at all reasonable times, afford duly authorized representatives of the USDA full access to Defendants’ establishment, if operating pursuant to a

federal grant of inspection, or to their facility, if operating pursuant to a Meat Inspection Act Inspection Exemption. “Full access” includes full and unimpeded opportunity to inspect and examine Defendants’ establishment or facility, operations, equipment, inventory, and records; to copy all such records; and to take reasonable samples of inventory. “All reasonable times” means any hours during which Defendants are doing business at Defendants’ establishment, including hours before dawn where applicable. Additionally, authorized representatives of the USDA shall have the right to seize and destroy any and all misbranded or uninspected meat or meat food products in accordance with applicable laws, regulations and USDA Food Safety Inspection Service directives.

8. ***Business Changes.*** Defendants shall notify the United States in writing at least twenty (20) days before any change or cessation in ownership or character of their business, such as assignment or sale resulting in the creation or emergence of a successor corporation or business entity, the creation or dissolution of subsidiaries, change or alteration of the business form or name, or any other change in their business structure that may have an effect upon Defendants’ compliance with the terms of this Consent Decree.

9. ***Violation of Sales Requirements.*** If Defendants fail to comply with the applicable sales restrictions of Paragraph 4(a) of this Consent Decree, Defendants agree to the following relief:

a. for the first violation, Defendants agree to pay to the United States a civil penalty of \$500.00 per pound, or portion thereof, of uninspected and or misbranded meat or meat food product capable of use as human food; and

b. for any subsequent violations, the defendants agree to pay to the United States a civil penalty of \$1,000.00 per pound, or portion thereof, of uninspected and or misbranded meat or meat food product capable of use as human food.

10. ***Violation of Other Requirements.*** If the Defendants fail to keep such records as willfully and correctly disclose the purchase, receipt, offer for sale, sale, transport and/or any other transaction regarding meat or meat food products capable of use as human food involved in their business, or fail to comply with any applicable requirement of the Meat Inspection Act and their regulations or with the requirements of this Consent Decree Paragraph 4(b)-(c) and Paragraph 5—Defendants agree to the following relief:

a. for the first violation, Defendants agree to pay to the United States a civil penalty of \$500.00 for each pound, or portion thereof, of uninspected meat or meat food product capable for use as human food;

b. for the second violation, Defendants agree to pay to the United States a civil penalty of \$1,000.00 for each pound, or portion thereof, of uninspected or misbranded meat or meat food product capable for use as human food; and

c. for every violation thereafter, Defendants agree to pay to the United States a civil penalty of \$2,500.00.

11. ***Serious or Repeat Violations.*** The amounts set forth in Paragraphs 9 and 10 shall be separate and apart from any other remedy that the United States may pursue for violations of this Consent Decree. Should enforcement proceedings beyond this Consent Decree be necessary, Defendants agree that the United States shall be entitled to recover from Defendants all court reasonable costs and expenses incurred by the Food Safety and Inspection Service of the USDA in such proceedings, including investigation time, preparation time, and reasonable

attorneys' fees. If Defendants commit any serious violations of the Meat Inspection Act or their regulations, or commit four or more violations of a similar type of the Meat Inspection Act or their regulations concerning (a) preparing, processing, or otherwise operating under unsanitary conditions; (b) selling, transporting, offering for sale or transportation, or receiving for transportation adulterated meat or meat food products and/or misbranded meat or meat food products; (c) processing any meat or meat food products, capable of use as human food, except in compliance with the Meat Inspection Act; (d) selling, transporting, offering for sale or transporting, or receiving for transportation non-federally inspected meat or meat food products, when the Meat Inspection Act requires inspection of such meat or meat food products; then USDA may summarily terminate Defendants' exempt status pursuant to 21 U.S.C. § 623 and 9 C.F.R. § 303.1 or summarily withdraw any grant of federal inspection pursuant to 21 U.S.C. § 671 and 9 C.F.R. Part 500, as applicable, to the extent that Defendants ever obtain such an exempt status or grant of federal inspection.

12. **Judicial Review.** If Defendants disagree with a determination made by USDA pursuant to Paragraphs 9 to 11 of this Consent Decree, they may petition the Court for an independent review of USDA's determination(s). Any such petition must be filed within thirty (30) days of USDA's determination(s) for which review is sought. In reviewing USDA's determination(s), the Court will apply the same standard of review applicable to review of final agency action under the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.* Review shall be based exclusively on the written record before the USDA at the time the decision was made. No discovery shall be taken by either party. In the absence of a timely petition for review, USDA's determination(s) will become final and unreviewable. Defendants shall be liable for such relief

as the Court deems appropriate in a proceeding brought either *sua sponte* or by the United States, for any failure to comply with any terms of this Consent Decree.

13. ***Other Rights and Remedies.*** This Consent Decree does not limit any rights or remedies available to the United States for any violation of the Meat Inspection Act and their associated regulations, including any rights or remedies available to the United States for any criminal violations. Defendants hereby waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to violations of this Consent Decree that may be based in whole or in part on a contention that, under the Double Jeopardy Clause of the Fifth Amendment to the Constitution, the Excessive Fines Clause of the Eighth Amendment to the Constitution, any statute of limitations, or the doctrine of laches, this Consent Decree bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Consent Decree constitutes an agreement by the United States concerning the characterization of payments from Defendants to the United States for purposes of the Internal Revenue laws, Title 26 of the United States Code.

14. ***Future Regulatory or Administrative Actions.*** The Parties agree that nothing in this Consent Decree shall preclude any future regulatory or administrative action authorized by law, regulation or otherwise, including, but not limited to the referral of any matter to any agency for possible criminal, civil, or administrative proceedings.

15. ***Contempt.*** Should the United States bring and prevail in a contempt action to enforce the terms of this Consent Decree, Defendants shall, in addition to other remedies, reimburse the United States for its reasonable attorneys' fees, travel expenses incurred by attorneys and witnesses, expert witness fees, administrative and court costs, investigation and

analytical expenses incurred in bringing the contempt action, and any other costs or fees related to the contempt proceedings.

16. ***Termination.*** After Defendants have maintained continuous satisfactory compliance with all requirements of this Consent Decree, as well as all applicable provisions of the Meat Inspection Act, for a period of four (4) years following the entry of the Consent Decree, Defendants may serve upon the United States a request for termination of the Consent Decree (“Request for Termination”), explaining how Defendants have satisfactorily complied with all such requirements, together with all necessary supporting documents. The parties shall thereafter confer informally concerning the Request for Termination and any disagreement that the parties may have with respect to whether Defendants have satisfactorily complied with the requirements for termination of the Consent Decree. If the United States agrees that the Consent Decree may be terminated, the parties shall submit, for the Court’s approval, a joint stipulation terminating the Consent Decree. If the United States does not agree that the Consent Decree may be terminated, Defendants may file a motion with this Court seeking relief from judgment pursuant to Rule 60(b) of the Federal Rules of Civil Procedure, provided, however, that Defendants will not file any such motion until sixty (60) days after service of the Request for Termination on the United States. Defendants must bear the burden of demonstrating to the Court that they have satisfactorily complied with all requirements of the Consent Decree and applicable provisions of the Meat Inspection Act, and that there is good cause to terminate the Consent Decree under Rule 60(b).

17. ***Provision of Copies; Declaration of Compliance.*** Defendants must provide a copy of this Consent Decree to each of their officers, directors, and employees within ten (10) days of the date of entry of this Consent Decree by the Court and must, within thirty (30) days of

the date of entry of this Consent Decree, provide undersigned counsel for the United States with a sworn declaration of compliance that contains the information set forth below. This sworn declaration must identify the name and position of each person that received a copy of this Consent Decree from Defendants pursuant to this Paragraph. If such an individual does not have a formal title, the sworn declaration must identify the function that such person performs for Defendants' business.

18. ***Fees and Costs.*** Each party shall bear its own costs and attorneys' fees.

19. ***Service.*** For purposes of this Consent Decree, service upon USDA (in particular the EOS Director), and the United States must be accomplished by hand delivery, by overnight delivery using a private carrier, *e.g.*, Federal Express, or by United States Postal Service certified mail with return receipt, and shall be made to the following addresses:

For USDA:

United States Department of Agriculture
Food Safety and Inspection Service
Office of Investigation, Enforcement and Audit
Attention: Director, Enforcement Operations Staff
Patriot Plaza III, 9th Floor, Cubicle 9-235A
355 E Street SW
Washington, DC 20024-3221

For the United States:

United States Attorney's Office
Southern District of New York
Attn: Assistant U.S. Attorney Charles S. Jacob
86 Chambers Street, 3rd Floor
New York, NY 10007

20. ***Payments.*** If Defendants are required to make any payment pursuant to this Consent Decree, Defendants will make such payment by electronic funds transfer pursuant to written instructions to be provided by the United States.

21. ***Effective Date.*** The provisions of this Consent Decree shall become effective immediately as to all Parties upon entry of this Consent Decree by the Court.

22. ***Jurisdiction.*** The Court retains jurisdiction to issue further decrees and orders as may be necessary to construe, carry out, modify, or enforce compliance with this Consent Decree.

Dated: June 28, 2021

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Southern District of New York

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Dated: 6/28, 2021

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By: 

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Counsel for Defendants

By: 

YONG XING WANG, individually

All motions are terminated.
The case is closed.

YIN GONG CORP.

By: 

YONG XING WANG, President

SO ORDERED:


UNITED STATES DISTRICT JUDGE

Dated: 6/29/2021
New York, New York